the bill is that **the poorest, the lowest, the humblest** wage earner in this country shall not be left helpless because he has not the facilities of a labor organization to help him enjoy social justice. The Federal Government will study his plight, examine his situation, determine what are the conditions under which he works and lives, and seek to provide for him a limited number of hours of work and a minimum wage.

"This bill is not concerned about wage earners that can protect their rights through collective bargaining. It excludes them from its provisions. It is only the lowest unprotected and unorganized wage earner that it seeks to protect from exploitation."

Congressional Record, volume 81, *page* 7808:

"MR. BLACK. As I understood the Senator—I may have been wrong—he criticized this bill impliedly because it left the jurisdiction to fix a minimum wage at 40 cents an hour. The committee was of the opinion that it was **not wise** for the Federal Government to attempt **to fix wages** in this country above the minimum. The committee was of the opinion that that **should be left to bargaining** between the employees and the employers, and that the jurisdiction should be left at that point—simply to provide a minimum wage. Is the Senator out of sympathy with that position of the committee?"

Congressional Record, volume 81, *page* 7813:

"MR. PEPPER. Exactly. It cannot be made too clear, then, that this bill is not designed to regulate hours and wages in industry. Some organized labor groups came before the committee and wanted us to put the ceiling of wage up to 60 or 70 cents an hour. So far as I am individually concerned, if the ceiling ever passes 40 cents an hour I shall vote against the bill because I am **not going to be enticed into the field of regulating wages**

and hours in all business in the United States. If that is to be done, why have collective bargaining? Why have the labor unions and the other groups that want to be self-protecting? What we want to do is to help the disorganized or unorganized group down at the bottom of the ladder that cannot speak for itself and cannot help itself. If we exercise a reasonable restraint upon our own idealism we are going to stop where the limits are fixed in this bill."

Congressional Record, volume 81, *page* 7868:

"MR. BLACK. I will state to the Senator that it has been my philosophy of legislation since I have attempted to make any study of it and had anything to do with it that, so far as it can be done to accomplish the purpose, without injury to any large body of the public, it is always better to specify clearly in the law itself the regulation which is to be prescribed, and it is only when conditions develop that require recognition of a diversity of duties and responsibilities that I favor transferring authority even to determine that a contingency has developed which makes it necessary for a board to act.

"Let us take the situation the Senator mentioned. We agree that we want to get away from the 12-hour day. I fully agree with the Senator on that point, as he knows. I have thought that there were times in the history of our country when it would be far wiser to have a definite work-week fixed by legislation. When 15,000,000 people are entirely out of work, I have no doubt of that. Now, however, we find the situation to be that many are working 12 hours a day, and that some are working 13 and 14 hours a day, and we want to get away from it; but, in doing so, we do not wish to cause an injury which might be greater than the good that would be accomplished."

Congressional Record, volume 81, *Appendix page* 1480:

SEN. BLACK: "We have also had evidence that at least 6,000,000 people are now working more than 40 hours a week in industries affected by the bill. If the Committee writes 40 hours into the bill as a maximum work week, these 6,000,000 people would be affected. And different results would follow if different figures are written into the bill. Estimates before our Committee are that the establishment of even a 40-hour week would result in the reemployment of one and one-half million workers. Shorter hours would employ still more.

"The net effect of this bill for labor as a whole will be incalculable.

"By shortening hours it will create new jobs in the **unskilled** categories for millions of our **unskilled** unemployed."

Congressional Record, volume 82, *page* 1390:

MRS. NORTON; "The bill, if enacted, will in no way interfere with the program of collective bargaining. This, because of many misrepresentations I have heard, I cannot stress enough. Like State minimum wage laws, it aims to establish only the basic wage and hour levels. **It does not attempt to standardize the pay of workers with special skills and long experience.** Such workers are equipped to establish their own terms of employment. This bill does not apply to them."

Congressional Record, volume 82, *page* 1392:

MRS. NORTON; "I appeal to you to vote for this bill. It may not contain everything you desire but it is a step in the right direction. It is establishing the principle of an equal opportunity to all men to make a decent living. It does destroy sweatshop labor in interstate commerce. It does destroy the power of the chiseler over the honest employer. It does give the children of the Nation, upon whom our country shall depend tomorrow, an opportu-

nity to develop properly. And, more important than all other considerations, it shall give to the 12,000,000 underprivileged inarticulate people of this country hope and courage."

Congressional Record, volume 82, *page* 1470:

"MR. JENKS of New Hampshire. Mr. Chairman, before this House there has been no legislation of greater national importance or more humane significance than this wage-and-hour bill. Its provisions, in the main, affect that **large group of semi-skilled and unskilled workers** scattered over the width and breadth of this land, and indirectly affect the interests of every man, woman, and child throughout the entire country. For that reason this legislation deserves and should have the unstinted attention and consideration of every Member of this body.

"Let us hastily construct a mental chart of the labor groups in this country. On the basis of the 1930 census—I have been unable to secure any later figures—we had 6,282,687 skilled workers, 7,977,572 semiskilled workers, and 14,008,869 unskilled workers. It is with **the latter two groups,** minus the farm and other exempted classes of workers, that this bill is concerned. On the basis of the 1930 figures, it could be roughly estimated there are somewhere between twelve and fourteen million **semi-skilled and unskilled** workers. The purpose of this wage and hour legislation is to stabilize employment and raise the general standard of living for this group of workers.

"At the outset, I want to say that I most heartily favor the basic principles of this measure—that is, the establishment of a decent minimum wage, the setting of reasonable maximum working hours . . . "

Congressional Record, volume 82, *page* 1505:

MR. SIROVICH: "Mr. Chairman, this minimum

wage of 40 cents per hour would put **unskilled labor, the worst-exploited workers** in America, in every state of the Union upon a parity and would give to them a purchasing and consuming power which has been denied to them through the inhuman and unjust wages that they are today receiving. This bill would be instrumental in regulating **the hours of unskilled labor,** so that these inarticulate workers would not work more than 40 hours a week at a minimum salary of 40 cents an hour, which would enable them to earn a maximum of $16 a week, which amounts to $832 a year, if they work an entire year. This salary for 1 year's work paid the **unskilled laborer** is less than a Congressman receives for one month's services to his constituency. What Member of Congress on either side of this House would be satisfied to see his son or daughter earn a maximum salary of $16 per week for 40 hours of work, which is less than the wages of the labor of the beast of burden?"

Congressional Record, volume 82, *page* 1591:

MRS. NORTON: "May I say that this is a test of your sincerity as to whether or not you want to give relief to 12,000,000 men and women in this country who are now working under substandard labor conditions? That is the object of this bill."

Congressional Record, volume 82, *page* 1671:

MR. KELLER: "The first mistake I desire to correct is this: The statement has been made here many times that we are trying 'to fix wages.' The fact is that we are trying to transfix the poverty of this country, to strike it down, to banish it, and give decent living conditions to the men and women who are now denied them. That is the main object of this bill we are talking about."

Congressional Record, volume 82, *page* 1825:

MR. VOORHIS: "The people who are sincerely

opposed to this bill on the ground that they believe in unlimited individual liberty and think the average workman without property can protect himself against all the power of wealth and all the blind economic forces, I understand; but if anyone wants to do something, not for organized labor, but for **the poorest people** in this Nation, he will not vote against this bill."

Congressional Record, volume 82, *Appendix page* 517:

REP. WOLVERTON: "The underlying purpose of this legislation is to provide better working conditions **in occupations where substandard labor conditions now prevail.** There has been general denunciation of sweatshop and child-labor conditions as detrimental to the physical and economic health, efficiency, and well-being of workers who come within either classification. This bill seeks to eliminate such, as far as it is within congressional power to do so." * * *

"But in no case has any serious objection been made to the underlying purpose of this legislation. It is encouraging to realize that there is such general accord with the effort now being made to provide better working conditions and improved standards of living for those who toil."

Congressional Record, volume 82, *Appendix page* 518:

REP. WOLVERTON: "There is hope among the supporters of this measure that the enactment of this bill will be of material assistance in providing a measure of increased purchasing power, so necessary in this time of business recession. The bill seeks to provide 'a fair day's pay for a fair day's work' on the theory that the application of this principle will increase purchasing power among **a large class of American workers who have little or no purchasing power at this time.** It will enable them, in turn, to buy more products from farm and factory. It will, therefore, give

increased employment in industry and on the farm to those now unemployed. Thus, while it is not contended that this bill would be sufficient in itself to solve the basic problem of purchasing power, which must be approached from many angles and in many different ways, yet it does give promise of being a reasonable approach to the problem."

Congressional Record, volume 82, *Appendix page* 518:

REP. ELLIOTT: "Mr. Speaker, as we consider this wage and hour bill let us be honest with the workers of this Nation and also the workers who are at present unemployed. **This bill will not provide more jobs**—it will only tend to protect the wage level and preserve fair standards of hours in many industries. The so-called business recession will not be halted by this legislation, and as I stated before, **the unemployed will not be provided with jobs.**"

Congressional Record, volume 83, *page* 7283:

"MR. CURLEY. Mr. Chairman, as a member of the Labor Committee of the House of Representatives, I beg to inform my colleagues in the House, that we have a sacred pledge to keep before adjournment to the millions of our ill-nourished, ill-clad, and ill-housed American citizens and their families, who are dependent upon them. We members of the Democratic majority were elected on a platform in November, 1936, pledged to a policy of humane treatment of this serious social problem. To be consistent, therefore, the administration recommended this constructive social legislation to the Congress of the United States, which, it is believed, would strengthen the weakened morale of the handcuffed workers who constitute the forgotten men and women of America today. **This vast helpless group of our unskilled labor** are the exploited type for specifically requiring the protection of the strong arm of Uncle Sam. There is

no conflict of jurisdiction, under the provisions of this fair standards of labor bill, and the existing labor organizations of this country. The bill concerns only of relieving the paralysis which, at present, shackles misery and poverty to millions of heads of families, who are underpaid and causing a colossal financial loss in purchasing power because of existing deplorable conditions. The essence of any remedy to relieve such terrible conditions is decent work at a decent living wage with reasonable maximum hours of labor; and that is what this pending bill will provide if adopted by the Congress."

Congressional Record, volume 83, *page* 7291:

"MR. ALLEN. * * * This bill has a threefold purpose as I see it. First, it eliminates sweat shops—it seems to me at this point that this answers the accusation by the opposition that we who are defending the bill are doing so for political reasons or under pressure from great labor organizations. The bill does not affect organized labor, but those 5,000,000 American working men and women who have not yet been benefited by organized labor. It affects 5,000,000 people who are outside the protection of labor organizations. The A. F. of L. and the C. I. O. are for the bill because they realize that there is a vast submerged group of our citizens which needs this help and which they cannot give them at this time. * * *

"This bill will increase employment and aid industry by eliminating that **ruthless type of competition which pays substandard wages and works labor long back-breaking hours**, and it will further aid industry by furnishing those customers whom I described a few moments ago."

Congressional Record, volume 83, *page* 7310:

MR. FITZGERALD: "I would have you observe that this proposed legislation **will not improve the**

wages and hours of the majority of workers, nor does it attempt to. For I am greatly pleased to say that the **majority** of workers **do not need** this legislation because they are receiving a living wage and are not forced to work unreasonable hours. **This happy condition has been brought about by** collective bargaining or by **the voluntary act** of an employer. I feel that the outstanding feature of this bill is that it will **benefit the minority** of our workers; who for years have been **abused and exploited by unscrupulous employers** and who have been forced to accept a wage that will not allow comfortable living, and who have been compelled to work 60 to 70 hours a week under intolerable working conditions. **These are the people** that will be protected and it is they who will reap the benefits of a bill that has a floor for wages and a ceiling for hours."

Congressional Record, volume 83, *page* 7323-4:

"MR. VOORHIS: Mr. Chairman, this wage-hour bill amounts simply to an **attempt to raise** a little the **standards of the poorest paid workers** of this country. It represents a statement by Congress that there is a standard below which no American citizen shall be asked to work.

"Certainly the standard is modest enough. With millions unemployed it is indeed difficult to see how a logical argument can be made for a longer workweek than 40 hours. But even that standard will not be reached for two years' time; and the bill, of course, does not actually forbid a workweek of a longer duration, but requires that if a man does work additional time he shall be paid time and a half for it." * * *

"This bill is not an organized labor bill at all. There probably are not more than a handful of organized workers in the Nation who get wages as low as those provided in this bill. **This bill is for the protection of a group of people** who have no

means of speaking for themselves—millions of them women, **all of them underpaid workers.**"

Congressional Record, volume 83, *page* 7447:

"MR. DIES. Mr. Chairman, I offer the following amendment, which I send to the desk.

"The Clerk read as follows:

"Amendment by Mr. Dies: Page 61, after line 5, insert new section, which shall be known as Section 14 (a), as follows:

" 'Sec. 14 (a). Any person in any State subject to this act who shall evade or attempt to evade the provisions of this act by increasing charges for housing, fuel, and lights furnished to his employees or who shall decrease the wages of any of his employees now receiving in excess of the minimum wage provided in this act in order to offset the increase in the wages of those who receive less than the minimum provided in this bill shall be deemed guilty of the violation of this act and upon conviction shall be punished in accordance with the provisions of Section 14.'

"MR. BOILEAU. Mr. Chairman, I make the point of order that the amendment is not germane to the bill. The amendment proposes to fix the sale of commodities, and there is nothing in the bill to that effect.

"MR. DIES. It does not provide that.

"THE CHAIRMAN. Does the gentleman from Texas desire to be heard?

"MR. DIES. I see no reason why it is not germane. This simply says that any employer who increases charges for housing, fuel, or light, or who decreases the pay of those who now receive more in order to offset the increase in the pay of those who receive less shall be deemed guilty of a violation of the act. The purpose of the amendment is to protect those employees who are still left under the bill.

"THE CHAIRMAN. The Chair is prepared to rule. Without regard to the language of the amendment relating to housing, fuel, and light, the amendment of the gentleman from Texas relates to a group of employees who are not covered by the pending bill. This amendment relates to a group of employees whose wages are in excess of the minimum wage.

"MR. DIES. The Chair is entirely mistaken, if I may be permitted to say so. Throughout this country, especially in the Southland, a great many of the companies furnish housing, fuel, and lights at a nominal cost. The point involved here is that under this bill all they have to do is to increase those charges and thus evade the law.

"THE CHAIRMAN. The Chair calls attention to the fact that the language here is 'or shall decrease the wages of any of his employees now receiving in excess of the minimum wage provided in this act.'

"Clearly that language applies to a group of employees not covered by this particular act. The Chair sustains the point of order."

Congressional Record, volume 83, *page* 9177:

SEN. WALSH: "Q. Does this bill wipe out all differentials in all wages above the minimum wage in various parts of the country?—A. Oh, no. Only differentials in minimum wages and maximum hours of employment. **Congress has no authority to deal with other wages. All wage earners have a constitutional right to bargain for whatever wage they choose. The Federal Government only has authority to deal with minimum wages because minimum wages and hours of employment relate to the health and general welfare of the citizens and it legislates in this field solely because it can be justified on humanitarian grounds. Both Federal and State constitutions forbid the fixing of any wage by law other than the minimum.** Of

course, the fixing of minimum wages has an effect upon all wages above the minimum and to that extent all other wages are or may be affected indirectly. There are differentials in wages in the same industry as paid in different parts of the country at the present time. These are not interfered with except in the only field where the Federal Government may interfere, namely, minimum wages. Differentials in other wages are not and cannot be regulated by the Federal Government."

Congressional Record, volume 83, *page* 9258:

MR. RANDOLPH: "I ask you as a plain matter of policy in this connection, Is it not best in this first Federal bill, designed to bring up a little the wages at the bottom of the scale and **regulate** also the **hours for the needy and underpaid** workers of this country, to make certain concessions?"

Congressional Record, volume 83, *page* 9262:

MR. SCHNEIDER: "Mr. Speaker, this legislation providing for minimum wage, maximum hours, and the abolition of child labor is most necessary at this time to restore wages to the barest minimum and to prevent any further cuts below it. The mistaken belief that some employers have, that we can promote recovery by means of wage reductions, is checked by strong labor organizations which have the power of resistance. But the employer intent on wage cuts meets with little or no resistance from the poorest paid and poorest organized workers. Hence, he reduces purchasing power still more, and depresses the industry still further, and tears down old standards. By the passage of this legislation the wage-cutting employer will be prevented from trying to smash his way to recovery over the living standards of the defenseless and helpless submerged one-third of the population, whose standards are already too low, and which, instead of being further reduced,

should and will be raised by the pending measure."

Congressional Record, volume 83, *Appendix pages* 2290-1:

REP. CELLER: "This legislation should be welcomed by every economic group in our Nation. It will affect millions of workers whose wages have been too low to buy even the barest necessities of life. That 'one-third of our population is ill-fed, ill-clothed, and ill-housed' is more than mere oratorical flourish; it is fact." * * *

"The wage and hour bill will help to raise the purchasing power of that one-third. And if we raise the purchasing power of the lowest-income groups, who will benefit?" * * *

"And let us not forget that problem of unemployment. The National Labor Relations Act and **the wage and hour bill are of little help to those who have no jobs at all.** That is why there is another part to the administration's welfare machinery—the President's recovery program just passed by the House of Representatives. By giving work to some three and a half or four million of the unemployed not only will we help to sustain those people through the depression, but the added demands for materials and the added purchasing power coming from those employed by the Federal Government will give jobs to millions more."

Congressional Record, volume 83, *Appendix page* 2942:

REP. ROBSION: "The primary purpose of this legislation is to eliminate the evils of child labor in certain sections of the country and **to cut out sweatshops with their unreasonably long hours and starvation wages.** Many industries favor this legislation because the products of these sweatshops with their long hours, low wages, and child labor come in direct competition with the products of industries that pay good wages, have reasonable

hours, good working conditions, and are prohibited by law in their State from the employment of child labor. No man with a family should be expected to live on less than $11 a week; in fact, in view of the high cost of living, it is difficult to see how any family could exist on any such sum. **The overwhelming majority of the American workers are receiving a much higher wage and have a shorter hour workweek.**

"With few exceptions the railroad workers receive a much higher wage than 25 cents an hour with an 8-hour day and time and a half for overtime. Many automobile factories pay their common laborers $6 a day for common labor. The mine workers in this country under their contracts receive on an average more than 70 cents an hour with a 35-hour week, and the lowest-paid workers under these contracts, as I remember, receive 50 cents an hour. The steel workers have even a better agreement. Many of the workers in the big industries receive an average 80 cents an hour with 30 hours to the week."

Subsequent Legislative Proceedings

Numerous amendments to the Act were introduced in the 76th Congress, some under sponsorship of proponents of the legislation and others under sponsorship of opponents. Three of the numerous amendments, the Norton amendment, the Ramspeck amendment and the Barden amendment, would have exempted from the Act salaried workers in higher brackets of pay. Serious consideration of the Barden amendment was discouraged by the President on the ground that the Act was still "in an evolutionary stage" and more "practical experience" was desired before substantial amendments should be adopted. (Congressional Record, volume 86, page 5123.)

All the numerous amendments were rejected except the Norton amendment, which was not rejected but was recommitted to the House Committee on Labor.

The rejection and recommitment of the offered amendments were effected by the votes of a combination of legislators, some of whom opposed any change in the Act, others of whom favored changes which went far beyond the offered amendments and in divergent directions, and others of whom preferred to stand by for further experience before entering the field of amendments.

The result is wholly without consequence in ascertaining the intent of Congress with respect to the Act. The question of spreading the work or curtailing hours was not mentioned in any of the debates or amendments. No question of construction of "regular rate" of pay was mentioned. Nor was petitioner's method of computation or any other problem involved in this suit mentioned.

Conclusions from Foregoing Legislative History

Certain rather definite conclusions may be drawn as follows:

1. Never in any of the President's three speeches—a chief source of inspiration of the legislation—was spreading the work mentioned as an objective of the bill. Never in any of such speeches was the bill treated as if it were designed to do more than require a one and one-half to one ratio of pay for overtime hours. Increase in total purchasing power through increase of wages by virtue of both the minimum wage and the overtime provisions of the bill was always mentioned. Con-

siderations of health and decency as opposed to sweatshops and starvation wages and all the social and welfare objectives suggested by such considerations were always mentioned. But never a hint of a desire to spread the work by prohibiting, or penalizing to the point of prohibition, employment for more than forty hours per week or requiring still higher pay or still shorter hours as to employees already paid at more than the minimum rate and at not less than the prescribed ratio for overtime hours, and already working hours well within the limits required for health and well being. In short, every purpose and desire of the President as expressed in the three speeches is satisfied by the employment arrangements under attack in this case.

2. The same is equally true when applied to each report of the legislative committees which were concerned with the legislation in any of its numerous stages. Not a word in any report of any legislative committee suggests a desire or even a hoped for consequence which is not fully satisfied by the employment arrangements under attack in this case.

3. The same is equally true when applied to the testimony of then Assistant Attorney General Jackson in his careful and detailed exposition of the bill and of its constitutional sanctions.

4. The same is equally true when applied to each draft of the bill in its various stages both in the expressions of legislative intent contained in the bill and in the operative provisions of the bill.

5. The same is equally true as applied to the overwhelming emphasis of the debates and speeches in Congress.

6. Affirmative evidence that the Act was not intended to strike down employment arrangements such as those under attack in this case is found in

the frequent and recurrent disclaimers of intent to impair freedom of contract at levels above the minimum standards.

7. Such affirmative evidence is further found in the action of Congress in rejecting amendments like the Maloney amendment and the Griswold amendment, which would have absolutely forbidden work above a maximum number of hours irrespective of fairness of pay and ratio of pay for overtime hours.

8. Some intrinsic evidence of meaning of regular rate of pay is discovered in that the earlier drafts of the bill measure the reparation due to the employee by one and one-half times the *agreed* rate of pay, such expression being used as the equivalent of regular rate of pay found in other sections of the bill.

9. Not a single word is found in the more than 2,000 pages with respect to any method of computation for ascertaining regular rate. Not a word to suggest an intent to favor, much less to demand, petitioner's method of computation. Not a word on the subject of the proper interpretation of "regular rate," except as mentioned in 6 and 8, above.

p. 2, 3, 4

SUPREME COURT OF THE UNITED STATES.

No 622.—October Term, 1941.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Petitioner,

vs.

A. H. Belo Corporation.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[June 8, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

This is a proceeding by the Administrator of the Wage and Hour Division of the Department of Labor to restrain the respondent corporation from alleged violation of the Fair Labor Standards Act.[1] The Administrator sought to prevent the use by respondent under certain contracts with its employees of wage agreements deemed by the Administrator violative of the time and a half for overtime provisions of section 7(a)[2] as implemented by section 15(a)(1) and (2).[3]

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[1] Enforcement of the requirements of the Act by injunction is authorized by section 17. "The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., 1934 edition, title 28, sec. 381), to restrain violations of section 15." 52 Stat. 1069; 29 U. S. C. § 217.

[2] "Sec. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours specified at a rate not less than one and one-half times the regular rate at which he is employed." 52 Stat. 1063; 29 U. S. C. § 207.

[3] "Sec. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale

The respondent, a Texas corporation, is the publisher of the Dallas *Morning News* and other periodicals, and the owner and operator of radio station WFAA. It has some 600 employees. Those in the mechanical departments work under a collective bargaining agreement and are not affected by the Fair Labor Standards Act. The others, and particularly those in the newspaper business, work irregular hours. Prior to the effective date of the Act, October 24, 1938, respondent had been paying all but two or three of these employees more than the minimum wage required by the Act. They received vacations of approximately two weeks each year at full pay; special bonuses at the end of the year amounting to approximately one week's earnings; and full pay during periods of illness, sometimes continuing for weeks and sometimes for months. At the time of the trial 28 superannuated employees were carried on the payroll at full rates of pay. Employees were permitted absences to attend to personal affairs without deductions from pay. When they were required to work long hours in any week, they were given compensating time off in succeeding weeks. Life insurance was carried for them at respondent's expense.

After the enactment of the Fair Labor Standards Act but before its effective date, respondent endeavored to adjust its compensation system to meet the requirements of the Act by negotiating a contract with each of its employees except those in the mechanical departments. These contracts were in the form of letters stating terms which were agreed to by the employees. The following is a typical letter:

"The Fair Labor Standards Act which goes into effect on October 24, 1938, provides for the following minimum wages and maximum hours of employment:

"First year—25¢ per hour minimum
44 hours maximum per week

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thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14; . . . . ." 52 Stat. 1068; 29 U. S. C. § 215.

"Second year—30¢ per hour minimum
42 hours maximum per week
"Third year—40¢ per hour minimum[4]
40 hours maximum per week

except that employees may work more than the number of hours specified above, provided that overtime rates shall be a minimum of one and one-half times the basic rate.

"In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be ... 67 ... cents per hour for the first forty-four hours each week, and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the necessities of the business may demand, a sum not less than ... $40...."

In most cases, as in this example, the specified hourly rate was fixed at 1/60th of the guaranteed weekly wage. The result was that during the first year under the Act when the statutory maximum of regular hours was 44, the employee was required to work 54½ hours before he became entitled to any pay in addition to the weekly guaranty.[5] When the employee worked enough hours at the contract rate to earn more than the guaranty, the surplus time was paid for at the rate of 150% of the hourly contract wage. If the employee received an increase in pay, the hourly rate and weekly rate were readjusted.

For eighteen months the system embodied in these contracts was followed to the apparent satisfaction of employer and employees. Respondent was then advised that the arrangement was in violation of the Act and that it was liable to its employees in an amount of from 30 to 60 thousand dollars. It was informed by the regional director in Dallas and by an official in the Administrator's office in Washington that an employee's complaint had precipitated the investigation. These officials declined to give the name of the employee.

Respondent thereupon brought suit for a declaratory judgment in the District Court for the Northern District of Texas joining

[4] In later letters this misstatement, immaterial here, was corrected. The minimum wage for the first 40 hours remains 30 cents until October 24, 1945. See § 6 of the Act.

[5] 44 hours at 67 cents equals $29.48; 10 2/3 hours at the statutory minimum overtime rate of $1.00 (150%×$.67) equals $10.67; $29.48 plus $10.67 equals $40.15.

£39.98 £50 £50

the regional director and three of its employees as defendants. The defendant employees answered that they and all the other employees affected by the system approved of it. The regional director moved to dismiss on two grounds, one of which was that he represented none of the employees. The motion to dismiss was denied. 35 F. Supp. 430. In the meantime petitioner instituted this suit to enjoin respondent from continuing to operate the wage system based upon its contracts with its employees. The two suits were consolidated and tried together. The District Court entered a declaratory judgment for the respondent and dismissed the bill for an injunction. 36 F. Supp. 907.

Petitioner appealed to the Circuit Court of Appeals from the dismissal of its complaint. That Court affirmed the judgment of the District Court. 121 F. 2d 207. It found that the contracts were "actual bona fide contracts of employment" and that "they were intended to, and did, really fix the regular rates at which each employee was employed." We granted certiorari because of the importance of the question in the administration of the Act. —U. S. —.

It is no doubt true, as petitioner contends, that the purpose of respondent's arrangement with its employees was to permit as far as possible the payment of the same total weekly wage after the Act as before. But nothing in the Act bars an employer from contracting with his employees to pay them the same wages that they received previously, so long as the new rate equals or exceeds the minimum required by the Act.[6]

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[6] Section 18 provides: "No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act." Whatever the legal effect of this language, it is certainly not a prohibition and the Administrator does not rely upon it. The finding of the Circuit Court of Appeals that respondent's effort to maintain the weekly incomes of its employees at their pre-Act level was in good faith gains support from the circumstance that at the very time when respondent was formulating its new wage policy the Wage and Hour Administrator declared:

"Clerical forces, we all feel, are included in the Act. But I cannot see where there is going to be any practical difficulty there because your clerical force in any plant of any consequence certainly is earning on a basis of more than 25 cents an hour weekly wages divided by the hours they work. If they are well above 25 cents an hour, it seems to me that there would not be much question about time and a half for overtime, because you could figure in that weekly wage that time and a half over the 44 hours had been given consideration as remuneration for their full week's pay."

Speech before the Southern States Industrial Council at Birmingham, Alabama, on September 29, 1938. 3 Wage and Hour Reporter 228.

The Act requires that for each hour of work beyond the statutory maximum the employees must be paid "not less than one and one-half times the regular rate at which he is employed." This case turns upon the meaning of the words "the regular rate at which he is employed." Respondent contends that the regular rate under the illustrative contract, which is set out above and to which we shall refer throughout, is 67 cents an hour. Petitioner argues, however, that the 67 cents hourly rate mentioned in the contract is meaningless and that the agreement is in effect for a weekly salary of $40 without regard to fluctuations in the number of hours worked each week. Treating the contract as one for a fixed weekly salary, he urges that the regular hourly rate for any single week is the quotient of the $40 guaranty divided by the number of hours actually worked in that week.[7] Under this formula the employee is entitled to the regular hourly rate thus determined for the first 44 hours[8] each week and to not less than one and one-half times that rate for each hour thereafter.

In its initial stage the question to which this dispute gives rise is a question of law, a question of interpretation of the statutory term "regular rate". But it is agreed that as a matter of law employer and employee may establish the "regular rate" by contract. In the case before us such an effort has been made, and in the example given the regular rate has been specified as 67 cents an hour. The difficulty arises from the inclusion of the $40 guaranty. The problem is whether the intention of the parties to set 67 cents an hour as the regular rate squares with their intention to guarantee a weekly income of $40. The Administrator's position is that these two objectives are inherently inconsistent and that the intention to fix the regular hourly rate at 67 cents is overridden by the intention to guarantee the $40 per week.

We cannot agree. In the first place, when an employee works more than 54½ hours in a single week, he is admittedly entitled to more than the $40 guarantee. The record shows that in such a case, the employee is paid at the rate of $1.00 an hour (150% × $.67) for each hour of overtime. In this situation, then, it is clearly the guaranty that becomes inoperative and the 67 cent hourly rate fixed by the contract that is controlling.

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[7] This has been the Administrator's interpretation of the Act, as set forth in Interpretative Bulletin No. 4, issued October 21, 1938 and revised in November, 1940.

[8] For the first year after passage of the Act; now 40 hours.

In the second place, although it is perfectly true that when the employee works less than 54½ hours during the week his pay is determined by the $40 guaranty, it does not dispose of the problem simply to say this. The question remains whether the $40 contemplates compensation for overtime as well as basic pay. The contract says that the employee is to receive 67 cents an hour for the first 44 hours and "*not less than* one and one-half time such basic rate" for each hour over 44. Consequently, if an employee works 50 hours in a given week, it might reasonably be said that his $40 wage consists of $29.48 for the first 44 hours ($44 \times \$.67$) plus $10.52 for the remaining six hours ($6 \times \$1.753$). To be sure, $1.753 is more than 150% of $.67. But the Act does not prohibit paying more; it requires only that the overtime rate be "not less than" 150% of the basic rate. It is also true that under this formula the overtime rate per hour may vary from week to week. But nothing in the Act forbids such fluctuation.

The gist of the Administrator's objection to this interpretation is that both the basic rate and the overtime rate are so "artificial" that the parties to the contract cannot fairly be supposed to have intended that it be so construed. It cannot be denied that the flexibility of the overtime rate is considerable, but this flexibility may well have been intended if it was the only means of securing uniformity in weekly income. Moreover, under the Administrator's interpretation, the regular rate in the example given is $40 divided by the number of hours worked each week. Since the number of hours worked fluctuates so drastically from week to week, this "regular" rate is certainly "irregular" in a mathematical sense. And inasmuch as it cannot be calculated until after the work week has been completed, it is difficult to say that it is "regular" in the sense that either employer or employee knows what it is or can plan on the basis of it.

The artificiality of the method urged by the Administrator is accentuated by the nature of his counter-proposal of two plans by which the weekly wage of an employee whose hours vary from week to week may be stabilized. One of these officially approved plans is known as the "time-off plan" and is explained in Interpretative Bulletin No. 4. Under this plan the employment must be placed upon an hourly rate basis with no mention of a guaranty. The pay days must be spaced at intervals of two weeks or longer. If the pay period is set at two weeks and the employee

is required to work overtime during the first week, he is given sufficient time off during the second week to keep his paycheck at a constant level. In our view this counter-proposal far exceeds in technicality the plan adopted by respondent. Moreover its operation is to provide a ceiling but not a floor for the wage. Since the pay is by the hour and there is no guaranty, in a pay period in which an employee works few hours, his wage may fall far below the level aimed at.

The other officially approved arrangement is known as the "pre-payment plan", and is also explained in Bulletin No. 4. Under this plan virtually the same arrangement as that which we have been using as an example can stand. That is to say, an employee may be promised 67 cents an hour for the first 44 hours, $1.00 for each hour over 44,[9] with a guaranty of $40 a week. However, in any week in which the employee's earnings at the stated hourly rates do not equal the $40 guaranty, the balance necessary to fulfill the guaranty must be treated as a loan to him. If in any succeeding week his earnings at the stated hourly rates exceed the guaranty, the excess is withheld by the employer as a repayment of the loan. But if his earnings do not exceed the guaranty in any succeeding week, and after receiving his pay check he does not return to work, the employer is presumed to make an effort to collect the excess amount paid to the employee in a previous week. If the employer does not recover this excess amount, then for all practical purposes the plan operates just as does the plan followed by the respondent in this case. About the only difference is that one is called a "guaranty plan" while the other is called a "pre-payment plan". In the opinion of the Administrator, the "pre-payment plan" is lawful; the "guaranty plan" is unlawful.

But the guaranty contract in this case carries out the intention of the Congress. It specifies a basic hourly rate of pay and not less than time and a half that rate for every hour of overtime work beyond the maximum hours fixed by the Act. It is entirely unlike the *Missel* case, decided this day. In the contract in that case there is no stated hourly wage and no provision for overtime. Under the decision in that case an employer who engages a worker for a fixed weekly wage of $40 for irregular hours and works him 65 hours (in a year when the maximum workweek is 44 hours),

[9] It should be noted that respondent's contract, set out above, does not fix $1.00 as the hourly rate for overtime. Instead it provides that the overtime rate shall be "not less than one and one-half" times 67 cents.

owes the employee $46.38. See *Missel case*. For the same hours under the Belo contract, at the hourly contract rate of 67 cents, the worker would receive $50.48. There is a difference in compensation, but that is the agreement of the parties and it is within the letter and the intention of the law.

The problem presented by this case is difficult—difficult because we are asked to provide a rigid definition of "regular rate" when Congress has failed to provide one. Presumably Congress refrained from attempting such a definition because the employment relationships to which the Act would apply were so various and unpredictable. And that which it was unwise for Congress to do, this Court should not do. When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it and approve an inflexible and artificial interpretation of the Act which finds no support in its text and which as a practical matter eliminates the possibility of steady income to employees with irregular hours. Where the question is as close as this one, it is well to follow the Congressional lead and to afford the fullest possible scope to agreements among the individuals who are actually affected. This policy is based upon a common sense recognition of the special problems confronting employer and employee in businesses where the work hours fluctuate from week to week and from day to day. Many such employees value the security of a regular weekly income. They want to operate on a family budget, to make commitments for payments on homes and automobiles and insurance. Congress has said nothing to prevent this desirable objective. This Court should not.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 622.—October Term, 1941.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Petitioner,

vs.

A. H. Belo Corporation.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[June 8, 1942.]

Mr. Justice Reed, dissenting.

The Court holds, "When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it and approve an inflexible and artificial interpretation of the Act which finds no support in its text and which as a practical matter eliminates the possibility of steady income to employees with irregular hours." Yet it is recognized by the Court that the validity of the contract "turns upon the meaning of the words 'the regular rate at which he is employed,'" the phrase left undefined by Congress, which it is said the courts also should leave undefined and flexible. Not only does the Court's conclusion assume that the typical Belo contract conforms to the Fair Labor Standards Act by the provision for hourly wages and time and a half for overtime, but in the opinion just announced, the Court approves this type contract for hiring "so long as the new rate equals or exceeds the minimum required by the Act." In so deciding the Court gives the phrase "regular rate" an interpretation as inflexible and artificial as that which it condemns.

The Court's interpretation that, in the absence of bad faith, any form of contract which assures the payment of the minimum wage and the required overtime complies with the Act may be assumed to be correct. But since the overtime hours must be compensated "at a rate not less than one and one-half times the regular rate at which he is employed" (Sec. 7(a)(3)), the regular rate cannot be left without "definition", "flexible" or unfound for this case. And once so found, it must be applied to the circumstances of this

litigation. No all inclusive definition will be attempted. The possibilities of variation in contracts are too great. Certainly, however, the Court does not mean to say that the employer and employee may capriciously select a certain figure, unrelated to the wages paid, and say "That is the regular rate of employment." Every contract of employment is assumed, by the statute, to contain a "regular rate," and for each contract it is a legal, not a factual, conclusion. What that rate is here is the object of our inquiry. Once determined for this case, that conclusion becomes a precedent for other similar contracts and so in one sense, whether we wish it or not, a definition to be applied in the administration of the Act.

This Court accepts the view that the Fair Labor Standards Act was intended not only to put a floor under wages but also a ceiling over hours. The limitation of hours in turn had two purposes—the spreading of work and extra compensation for overtime, no matter how high the regular wage may be. *Overnight Motor Transportation Co.* v. *Missel*, No. 939, October Term 1941, decided June 8, 1942, slip opinion page 4. Since overtime pay must at least equal time and a half the regular rate, as section 7(a) specifies, employers and employees may not be permitted to contract in avoidance of the statutory requirement. Contracts for a regular rate per hour conform easily to the requirements but contracts for compensation in other forms compel an analysis of their terms to find the regular rate. Fixed salaries, as this Court agrees today in *Missel's* case, are to be reduced to hourly rates on the basis of a week as the unit of time. Belo's contract contains elements both of hourly wage and fixed weekly wage contracts. We come then to this point. Are the contracts here involved for weekly wages with variable hours or for hourly rates with time and a half of such rates for overtime? If the latter, respondent contends the Act has left him free to contract with his employees at such hourly regular rates as may be agreed upon, limited only by the minimum wage requirements. As a court, we must appraise the nature of these contracts and in my judgment they are agreements for weekly wages for variable hours, with a provision for additional compensation per hour contingent upon work in excess of an ascertainable number of hours—the number of hours of work required for the wages earned under the hourly

wage terms of the contract to equal the guaranty.[1] Until these hours are exceeded, the stipulated wage per hour has no demonstrable effect.

The contracts stated they were drawn to comply with the "scheme of the Act without reducing" weekly wages. The hourly rate was customarily written as one-sixtieth of the weekly wages. The overtime above the maximum hours was set at 150% of the hourly wage or one-fortieth of the weekly. This was then followed by a guaranty that the employee should "receive weekly," for regular and overtime, the former weekly wage. This guaranty was the dominating feature of the contract. Without the guaranty, the adoption of a low hourly rate would encounter the full weight of employee bargaining power. The guaranty avoids this conflict by fixing the minimum weekly wage. This guaranty controls the weekly wage up to 54½ hours of work, the number of hours contracted for by Belo without paying more than the fixed weekly wage. In a 54½ hour week or less the regular rate should be the guaranty divided by the hours actually worked.

It seems obvious that the guaranty was the heart of the arrangement. The effect of the contract in the illustrative case is to pay 73 cents an hour for work up to 54½ hours and $1.00 (expressed in the circumlocution of time and a half 67 cents) for overtime beyond those hours, with a guaranty that there will be $40 worth of work each week. The "basic" hourly rate, the hours contracted for at the basic rate and the stated percentage paid for overtime may be varied without effect on earnings provided the guaranty and real overtime rate are kept fixed.[2]

The employee willing, the number of hours which must be worked to earn the guaranty can be increased by suitable adjustment of the

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[1] Cf. Carleton Screw Products Co. *v.* Fleming, 126 F. 2d 537.

[2] An example will illustrate the lack of significance of the other numbers in the contract. Varying rates, hours and overtime percentages are substituted for those in the Belo contract quoted in the Court's opinion. "In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be [50]¢ cents per hour for the first [29] hours each week, and that for time over [29] hours each week you will receive for each hour of work not less than [double] time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40.00."

29 hours × $.50 = $14.50. 54.5 hours — 29 hours = 25.5 hours at $1.00 per hour = $25.50. Time plus overtime = $40.00. Thereafter the employee receives $1.00 per hour.

The same is true of a basic rate of $.60 for 36¼ hours and time and two-thirds thereafter, with a guaranty of $40.

contract figures of hourly rate, hours contracted and overtime percentages. By such a verbal device, astute management may avoid many of the disadvantages of ordinary overtime, chief of which is a definite increase in the cost of labor as soon as the hours worked exceed the statutory workweek. If the intention of Congress is to require at least time and a half for overtime work beyond a fixed maximum number of hours (40, 42 or 44 hours), that intention is frustrated by today's holding. Under *Missel's* case, an employer who engages a worker for a fixed weekly wage of $40 for irregular hours and works him 54½ hours a week in a year with a 44 hour maximum, owes $43.86. Under the Belo contract, the worker would receive $40. Because there is no increase of labor cost between the statutory maximum and the hours contracted for (54½), the employer has a financial inducement to require hours beyond the statutory maximum.

As pointed out above, this contract is not only an agreement to pay a fixed wage, $40.00, for variable hours up to 54½, but there is a provision for additional compensation for the hours over the contract maximum. Where the hours worked exceed the number necessary to entitle the employee to hourly pay under the contract, equal in the aggregate to the guaranty, the employee is entitled to receive his regular rate for the statutory maximum hours and 150% of that rate for all overtime. The contracts in most instances fixed the basic rate at one-sixtieth of the guaranty, but the effect of the guaranty, in our view, is to make the regular rate of employment for the precise number of hours necessary under the contract to earn the guaranty, the quotient of the guaranty divided by the hours.[3] For the surplus hours over 54½ the same regular rate continues to be applicable.[4]

It is the guaranty which gives character to these contracts, which determines the amount to be received by the employee under its terms, except in the instances of work beyond 54½ hours. It is only work beyond the 54½ hours which calls for extra pay from

[3] Weekly guaranty—$40. Hours worked—54⅔. Straight hourly contract wage—$40÷60=$.66⅔. Straight contract hours—44. 44×$.66⅔=$29.33⅓. Overtime hourly contract wage—$1.00. Overtime contract hours—10⅔. 10⅔×$1=$10.66⅔. Total contract wage paid—$40. Statutory regular rate—40÷54⅔=$.732 per hour. Statutory maximum hours—44. 44×$.732=$32.20. Statutory overtime rate—$1.098. Statutory overtime hours—10⅔. 10⅔×$1.098=$11.71. Total required compensation—$43.91.

[4] Hours worked—60. Statutory maximum hours—44. Regular rate—$.732. 44×$.732=$32.20. Statutory overtime hours—16. Overtime rate—$1.098. 16×$1.098=$17.57. Total required compensation—$49.77.

the employer. Consequently it seems proper to find the regular rate of employment by using the guarantee as the dividend and the maximum hours possible without increased contract pay as the divisor. The objection that this permits statutory overtime pay to be computed on contract overtime pay springs from the wording of the contract making the guarantee cover overtime up to the 54½ hours. This objection loses its force with the determination that the guaranty fixes the quality of the contract, rather than the so-called basic or hourly rate of pay.

The judgment of the Circuit Court of Appeals should be reversed and this action remanded to the District Court for further proceedings.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice Murphy join in this dissent.